

### **REMARKS**

Claims 1-16 are pending in the present application. Claims 1-16 stand rejected. In this response, Applicants have amended claims 1-3, 5, 6, 8-10, 12, and 15, cancelled claim 16, and added new claims 21-25. No new matter has been added. Applicants respectfully request reconsideration and allowance in light of the amendments to the claims and the following remarks.

#### **I. Specification**

In the Action, the specification was objected to because of a lack of a cross-reference to related applications. The specification has been amended to add a cross-reference. Accordingly, Applicants respectfully request that the objection be withdrawn.

#### **II. Double Patenting**

In the Action, claims 1-16 were provisionally rejected for nonstatutory obviousness-type double patenting over claims 1-14 of copending Application No. 10/552873, and rejected for obviousness-type double patenting over claims 1-22 of U.S. Patent No. 7,490,641.

Accordingly, Applicants are filing herewith a timely terminal disclaimer, obviating the double patenting rejection.

#### **III. Claim Rejections – 35 U.S.C. §112**

Claims 1-16 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter. Applicants have amended the claims to overcome the rejections, and respectfully request that the rejections be withdrawn.

#### **IV. Claim Rejections – 35 U.S.C. §102**

Claims 1-16 were rejected under 35 U.S.C. 102(b) as being anticipated by Davenport (5,417,265). Claims 1-16 were also rejected under 35 U.S.C. 102(b) as being anticipated by Mierau (5,765,617), or Kennedy (5,884,682) or Bowlin (4,879,659). Applicants respectfully traverse the rejections.

## **A. Davenport**

### **1. Claim 1**

Claims 1-16 were rejected under 35 U.S.C. 102(b) as being anticipated by Davenport (5,417,265). The Action states that "Davenport discloses a planer in conjunction with an infeed system to feed lumber to the planer; wherein the infeed system includes a sheet feeder, a speed controller, i.e. variable speed linear acceleration device; the planer including cutting elements and guiding elements, a control system for controlling the infeed system for delivery of lumber to the planer."

While Applicants may not agree with the interpretation of Davenport, Davenport does not disclose, and the Action does not allege that Davenport discloses a "means . . . for setting the size of gaps between successive workpieces . . . wherein the means for setting the size of gaps is configured to set the gaps to provide enough time for at least one of the movable cutting elements or the movable guiding elements to be moved to their respective optimized positions corresponding to the next successive workpiece in the array of workpieces," as is recited in independent claim 1. Davenport does not teach or even suggest setting the size of gaps between successive workpieces based on the amount of time it will take for at least one of the movable cutting elements or the movable guiding elements to be moved from the finishing position for the first workpiece to the starting position for the second workpiece of successive workpieces. Therefore, Davenport fails to teach all the features recited in claim 1, and applicants respectfully submit that claim 1 is allowable.

Claims 2, 10-12, and 15, and 21 depend, either directly or indirectly from claim 1. Therefore, claim 2 is allowable for at least the reasons claim 1 is allowable.

## **2. Claim 3**

Claim 3 depends from claim 1. Therefore, claim 3 is allowable for at least the reasons that claim 1 is allowable.

Additionally, claim 3 is allowable because Davenport does not disclose or suggest a "means for accelerating a workpiece along, and cooperating with, said workpiece feed path so as to control said size of gaps" as recited in claim 3.

While the Action states that Davenport teaches "a speed controller, i.e. variable speed linear acceleration device," Applicants respectfully disagree. Although Davenport discloses multiple conveyors that operate at different speeds relative to each other, the speed of each conveyor is pre-determined and constant. See, e.g., Davenport col. 6 ll. 7-11 ("the speed at which the feed conveyor means moves the lumber in a direction parallel with the longitudinal machining path is preferably selected from the range of 0.5 to 1.0 times predetermined longitudinal speed of the machining device"). Davenport does not disclose a "means for accelerating a workpiece along, and cooperating with, said workpiece feed path so as to control said size of gaps." That is, Davenport does not disclose the ability to change the speed of the workpiece while it is traveling along the workpiece feed path in order to control the size of gaps. Instead, Davenport teaches placing the lumber on the feed conveyor at a time interval which will result in a fixed desired gap. See, e.g., Davenport col. 7 ll. 41-45 ("the lumber placement means comprises control means for selectably placing pieces of lumber on the feed conveyor means such that individual pieces of lumber successively contact the guide conveyor"). For at least these reasons, Applicants respectfully submit that claim 3 is allowable.

Claims 4-9, 13, 14, 22, and 23 depend, either directly or indirectly, from claim 3. Therefore, claims 4-9, 13, 14, 22, and 23 are allowable for at least the reasons claim 3 is allowable.

## **B. Mierau, Kennedy, and Bowlin**

Claims 1-16 were rejected under 35 U.S.C. 102(b) as being anticipated by Mierau (5,765,617) or Kennedy (5,884,682) or Bowlin (4,879,659).

### **1. Claim 1**

The Action states that “Mierau, Kennedy and Bowlin disclose the claimed invention including a control system, a work piece feed path, an optimizing planer and a workpiece interrogator.” (citations omitted). However, as was shown with Davenport above, none of Mierau, Kennedy, or Bowlin disclose or suggest a “means . . . for setting the size of gaps between successive workpieces . . . wherein the means for setting the size of gaps is configured to set the gaps to provide enough time for at least one of the movable cutting elements or the movable guiding elements to be moved to their respective optimized positions corresponding to the next successive workpiece in the array of workpieces,” as is recited in independent claim 1. Of the three, Applicants only find reference to setting the gaps between successive workpieces in Kennedy, which states only that “[t]he gap between subsequent workpieces may be adjusted if required.” Kennedy, col. 12 ll. 17-19. However, this does not teach the feature recited in claim 1 and quoted above. As with Davenport, Kennedy teaches nothing about setting the size of gaps between successive workpieces based on the amount of time it will take for at least one of the movable cutting elements or the movable guiding elements to be moved from the finishing position for the first workpiece to the starting position for the second workpiece of successive workpieces. Therefore, applicants respectfully submit that claim 1 is allowable.

Claims 2, 10-12, and 15, and 21 depend, either directly or indirectly from claim 1. Therefore, claim 2 is allowable for at least the reasons claim 1 is allowable.

### **2. Claim 3**

Claim 3 depends from claim 1 and is therefore allowable for at least the reasons claim 1 is allowable.

As discussed for Davenport above, claim 3 is also allowable because neither Mierau, Kennedy, or Bowlin likewise disclose or suggest a “means for accelerating a workpiece along, and cooperating with, said workpiece feed path so as to control said

size of gaps" as recited in claim 3. Therefore, applicants respectfully submit that claim 1 is allowable.

Claims 4-9, 13, 14, 22, and 23 depend, either directly or indirectly, from claim 3. Therefore, claims 4-9, 13, 14, 22, and 23 are allowable for at least the reasons claim 3 is allowable.

## **V. New Claims**

New claims 21-25 have been added. No new matter has been added.

Claim 21 depends from claim 1, and is therefore allowable for at least the reasons claim 1 is allowable. Claims 22 and 23 depend indirectly from claim 3, and are therefore allowable for at least the reasons claim 3 is allowable.

Independent claim 24 incorporates similar subject matter to independent claim 1, shown above to be patentable, but without using means plus function language. Accordingly, independent claim 24 is allowable for at least the reasons claim 1 is allowable. Claim 25 depends from claim 24, and is therefore allowable for at least the reasons claim 24 is allowable.

### **CONCLUSION**

In view of the foregoing, Applicants submit all pending claims, specifically claims 1-15 and 21-25, are in condition for allowance. Should any questions arise, the Examiner is invited to contact the undersigned at (503) 796-2456. Also, the Commissioner is hereby authorized to charge shortages or credit overpayments to Deposit Account No. 500393.

Respectfully submitted,  
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